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Mr ROBERTO CESARI
CHAIR OF THE COMPLIANCE COMMITTEE
OF THE INDIAN OCEAN TUNA COMMISSION (IOTC)

SUBJECT: PETITION TO POSTPONE THE DISCUSSION AND DECISION TO
INCLUDE THE *TXORI ARGI* ON THE IUU LIST.

EXISTENCE OF A PRIOR JURIDICAL MATTER TO BE DECIDED BY
THE ADMINISTRATIVE COURT OF MOZAMBIQUE.

Dear Sir,

I am writing to you in my capacity as legal council to Inpesca, S.A., in the litigation in which it is opposing the Ministry of Fishery of Mozambique (MF), to state and REQUEST the following:

1. The MF fined the vessel *Txori Argi* an extremely high monetary amount, allegedly for having fished without a licence some miles within the territorial waters of Mozambique, when it was fishing, duly licensed, in the waters of Madagascar.
2. There having been severe signs of irregularity and illegality in the Administrative Proceedings of Fishery Offences that were brought against Inpesca, as well as in the respective final decision, it was subject to contentious appeal by the Administrative Court (Contentious Appeal number 70/12), with the petition that the resolution appealed be declared NULL.
3. Meanwhile, during the formalities of that administrative appeal, Inpesca was informed of new facts that pointed to the existence of a false document within the proceedings of Fishery Infringement Proceedings number 02/FIS/DPPN/2012, specifically a forged final report.
4. Due to the severe nature of the situation, Inpesca even filed a motion claiming forgery, with a petition for the Administrative Court to declare that document (Final Report) false and, as a consequence, the whole administrative proceedings flawed, including the final decision to fine it.
5. To sum up, there are serious probabilities of the decision by the MF against Inpesca being declared NULL by the Administrative Court.

6. The Constitution of the Republic of Mozambique declares the following in that regard:
 - *Citizens may impugn acts that infringe their rights established in the Constitution of other laws - Article 69.*
 - *Citizens have the right to resort to the courts against acts that infringe their rights and interests protected by the Constitution and by the laws - Article 70.*
 - *All citizens are entitled to present petitions, complaints and claims by means of the competent authority to demand or re-establish their rights infringed, or to defend the general interests.*
 - *It is the competence, specifically of the Administrative Court, to judge the contentious appeals filed against the decisions by the bodies of the State, respective incumbents and agents - Article 230 /1-b).*
 - *The decisions by the courts must obligatorily be fulfilled by all the citizens and other legal persons and prevail over those by any other authority.*
 - *The parties arraigned shall enjoy the presumption of innocence until definitive judicial finding - Article 59 /2.*
7. It was within the setting of this juridical-constitutional framework that Inpesca acted to defend its legally protected rights and interests.
8. Meanwhile, in a scarcely prudent manner, with the aim of persecution and revenge, even while having knowledge of all the regulatory and procedural judicial setting described here above, the MF submitted an application to the IOTC to include the *Txori Argi* on the IUU list.
9. That application obviously depends directly on the validity of the final resolution of Fishery Infringement Proceedings number 02/FIS/DPPN/2012, that is now being reappraised by the Administrative Court.
10. By submitting that application without awaiting the finding by the Administrative Court of Mozambique as would be legally prudent and sensible, the MF may be leading the IOTC to an error, causing it to decide and to penalise Inpesca on the basis of a decision of its own that may still be declared NULL.
11. Thus, we understand that the finding by the Administrative Court, that has not yet been handed down, is PRIOR to any other decision of an administrative and penalisation nature against Inpesca.
12. Thus, its result might eventually prevent implementation of the juridical effects of the other decisions related to it - as would be the decision by the IOTC.
13. In this context, one asks: what would happen if the Administrative Court were to declare the decision by the MF NULL?

14. And what if the IOTC had already decided to have the *Txori Argi* placed on the IUU list, with the relevant legal and financial consequences?
15. Indeed, this decision brought about hastily by the MF would cause Inpesca irreparable damage, or that it would be difficult to repair.
16. This could be avoided, for the sake of justice, merely by postponing discussion of the application to a time following issue of the finding by the Administrative Court of Mozambique.

Under these terms and others of the law, I request that you see fit to appreciate the set of facts described above and respective juridical consequences and to decide objectively, *ad cautelam*, that analysis and decision of the application by the MF be postponed to a date after the finding by the Administrative Court of Mozambique; thus with the precaution of awaiting the eventual useful effect of the decision by the court concerning the appellant Inpesca and abstaining from causing it irreparable damage, or those that may be difficult to repair, that may become considered illegal due to being based on a decision that may eventually be declared ILLEGAL.

Beira, on 23rd April 2013.

THE LAWYER.

Bar Association Member number 103.

(Signature)
Gilberto Correia

(Red ink stamp of Gilberto Correia, Lawyers and Consultants, Rua Alvaro Ferraz no. 333 (Vivenda Cunha), Ponta-Gêa, Beira. Tel. 23 328310 Fax 23 328750, Mobile 82 5173440. E-mail: geral@correiadvogados.com).